

### DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE WASHINGTON, D.C. 20224

FEB 1 0 2000

FROM:	Kirsten Wielobob   Acting Counsel to the National Taxpayer Advocate
SUBJECT:	Taxpayer Tax
issues raised by	se to a request that this office review and comment upon legal the taxpayer identified above. We have addressed each issue where appropriate, attached supporting documents for your
	<u>Issues</u>
	5601, Notice of Deficiency, bearing a stamped or facsimile ly valid notice of an outstanding tax deficiency?
deficiency for the	ailure to include a \$ payment of tax in the notice of tax year dated render invalid the entire for that tax year?
resulted in payme tax) constitute fra	tice and demand addressed to the taxpayer and his wife that ent of the identified liability by the wife (who has no liability for the ud? If so, should the IRS refund the sum paid, even though the limitations has expired?
4. Did the tax	payer experience a deductible casualty loss in

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issued notices of deficiency to	for the	
income tax years, based on substitute	returns filed by the Service	е.
filed a petition in Tax Court on	disputing the deficiency.	
The Tax Court dismissed the case in	because (1)	filed his
petition late and (2) it did not have	jurisdiction with respect to	0

In his various submissions, does not appear to dispute that he failed to file tax returns for the years at issue and has not subsequently filed returns for the pertinent years. Further, he believes that there are no income taxes owed for the periods in which he did not file returns.

#### **Discussion**

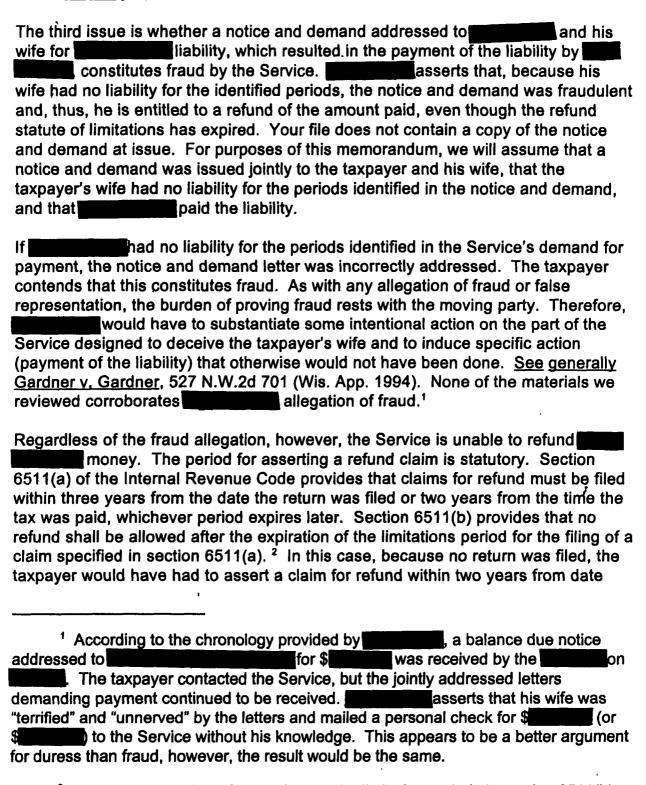
## 1. <u>Facsimile signatures</u>

The first issue is whether a Notice of Deficiency, Form 5601, bearing a stamped or facsimile signature constitutes legally valid notice of an outstanding tax deficiency. Section 6212 of the Internal Revenue Code authorizes the Secretary or his delegate to sign and send notices of deficiency for specific types of tax deficiency. See also I.R.C. § 7701(a)(11)(B). Service Center directors are delegated the authority to sign and send a notice of deficiency. See Delegation Order No. 77 (attached). The authority to use a stamped, imprinted or facsimile signature on notices of deficiency is provided in IRM 4463.33 (also attached). The stamped signature of the Service Center Director on notice of deficiency is in conformance with both the law and applicable Service procedure.

# 2. Conklin v. Commissioner

The second issue is whether the Service's failure to include a \$ payment of tax in the notice of deficiency for the tax year rendered the entire assessment of \$ invalid. Apparently, believes that Conklin v. Commissioner, 897 F.2d 1027 (10th Cir. 1990), supports the proposition that a notice of deficiency is invalid where a taxpayer partially pays a tax liability prior to the Service issuing a notice of deficiency that does not include the partial payment. As indicated and fully addressed in our memorandum dated September 8, 1999 (attached), that is not correct. Because was add not pay the tax in full prior to the Service issuing the notice of deficiency, the notice was not invalid. The notice may have been incorrect as to the amount of the tax deficiency, but a deficiency existed nonetheless. The \$ payment reduced the amount of the original assessment, but did not invalidate the assessment.

### 3. Untimely refund claim



<sup>&</sup>lt;sup>2</sup> There are a number of exceptions to the limitation periods in section 6511(b), however, none are applicable on the known facts of this case.

payment was made in mid-by the taxpayer's wife. The taxpayer apparently acknowledges that any claim for refund filed now would be inconsistent with the statutory requirements and thus, would be untimely. A however, seems to be seeking some "equitable" exception to the refund statute of limitations based on the allegedly fraudulent actions of the Service.

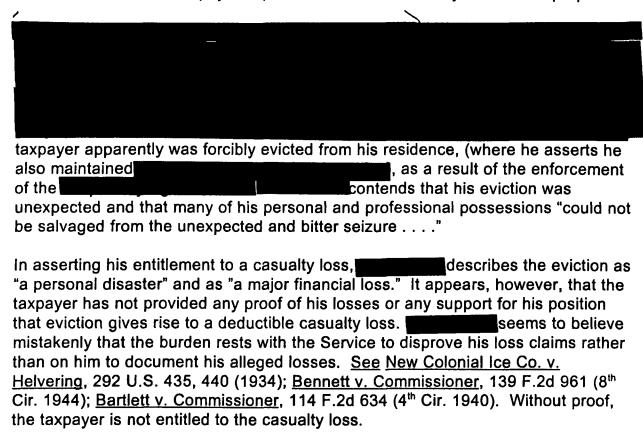
The Service does not have the authority to waive the statute of limitations for refunds under I.R.C. § 6511. See Angelus Milling Co. v. Commissioner, 325 U.S. 293, 296 (1945). Any exceptions to the limitations period identified in section 6511 appear in the statute itself and, as recently recognized by the Supreme Court, even when the equities weigh heavily in favor of the taxpayer, the provisions of the section 6511 cannot be tolled for "nonstatutory equitable reasons". United States v. Brockamp, 519 U.S. 347 (1997). The Court's holding in Brockamp reaffirms the position taken by numerous lower courts that addressed the theories of "equitable tolling" and "equitable estoppel" as they relate to tax claims. The courts have consistently recognized that hardships, mistakes, incorrect information, and detrimental reliance on incorrect information do not operate to suspend the refund limitations period. <sup>3</sup> See Webb v. United States, 66 F.3d 691 (4th Cir. 1995) (fraudulent transfers by third parties from assets of the taxpayer resulting in wronafully paid taxes did not entail taxpayer to a refund of amounts paid more than two years prior to the filing of refund claim); Burns v. U.S., 97-1 U.S.T.C. ¶ 50,331 (M.D. Fla. 1997) (being misled by IRS agent to believe that disability income was taxable does not allow time barred refund claim); Bryan v. U.S., 22 F. Supp. 232 (N.D. Okla. 1938) (concealment of overpayment of income tax by revenue agents does not stop the running of statutory period of limitations on filing refund claim). Accordingly, regardless of the circumstances surrounding the issuance of the notice had two years from the date of payment to make a claim and demand. for refund.

### 4. Casualty loss claim

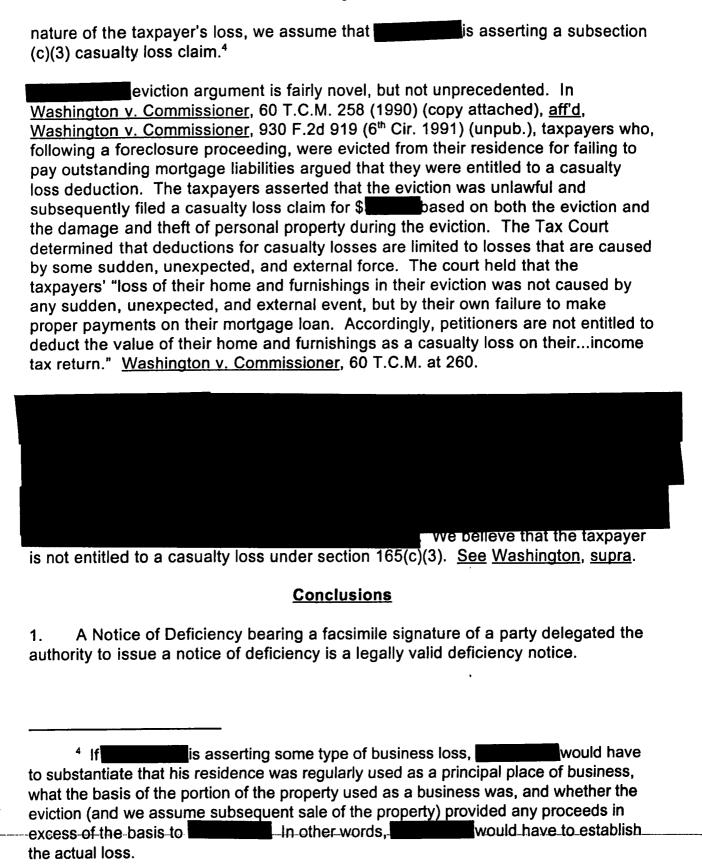
The fourth issue is whether experienced a deductible casualty loss in the tax year relating to his eviction from his home. We believe that he did not

<sup>&</sup>lt;sup>3</sup> In response to the decision in <u>Brockamp</u>, the IRS Restructuring and Reform Act of 1998 added subsection (h) to section 6511 of the Code. Section 6511(h) suspends the refund limitations period while (1) the taxpayer is unable to manage his/her financial affairs due to a medically determined mental or physical disability and (2) there is no party authorized to act in financial matters on behalf of the taxpayer during this period.

for two reasons. First, the taxpayer did not prove his losses. Second, the loss the documents show the taxpayer experienced is not a casualty loss for tax purposes.



Further, while the taxpayer's eviction from his home may have been devastating personally, it is not the type of sudden, unexpected loss generally referred to or allowed as a casualty loss. To the extent the taxpayer is not compensated by insurance or otherwise, section 165(a) of the Code allows a deduction for losses sustained during the taxable year. Section 165(c) provides for losses in the case of an individual and limits those losses to those incurred in a trade or business, or losses unrelated to a trade or business, but related to transactions entered into for profit, or to losses not incurred in a trade or business, if such losses arise from fire, storm, shipwreck, or other casualty for the taxable year in which the loss is sustained. I.R.C. § 165(c)(1)-(3). Since the taxpayer did not file a return identifying the specific items lost or the amount of his claim, it is difficult to ascertain what type of loss claim the taxpayer is asserting. However, based on the taxpayer's continual reference to a casualty loss claim in the file documents and the overall personal



2. The failure to include a partial payment amount in a notice of deficiency does not invalidate the total tax assessment and <u>Conklin</u> has no applicability on the facts of this taxpayer's case.
3. Regardless of the circumstances, however, the statute of limitations bars a refund of the amount paid by Mrs.
4. Even if had filed a return for the he would not be entitled to deduct as a casualty loss amounts related to his eviction without proof that he suffered specific losses. Further, losses of property related to an eviction from a personal residence in which the taxpayer was aware of the would not constitute casualty losses since the eviction was not a sudden, unexpected or external event.
Please call me if you have questions or need additional information.
Attachments (4)
cc: National Director, Customer Account Operations Local Taxpayer Advocate, Virginia District